IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 799 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DURGESH ALIAS DUSHYANT ANCHAL

Versus

STATE OF GUJARAT

Appearance:

MR PRAFULL K PATHAK for Petitioner No. 1

MS MITA PANCHAL, APP for Respondents

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 16/10/2003

ORAL JUDGEMENT

1. By way of this Special Criminal Application, the petitioner has challenged the order passed by the respondent No.2 Deputy Police Commissioner, Zone - 4, Ahmedabad City, on 19.8.2003, externing the present petitioner under Section 36(b) of the Bombay Police Act,

1951, for two years from the city of Ahmedabad, District of Ahmedabad Road, District of Gandhinagar, District of Kheda and District of Mehsana. The order came to be passed in Externment Case No.117 of 2002.

2. Against the above said order, the petitioner also preferred an Appeal before the State Government as per Section 60 of the Bombay Police Act, 1951, but the said Appeal came to be dismissed by the State Government on 2.11.2002 and hence both these orders are challenged in this Special Criminal Application.

3. As per brief facts of the case, Assistant Police Commissioner, Ahmedabad City, was pleased to issue a notice against the petitioner under Section 59 of the Bombay Police Act to show cause as to why the petitioner should not be removed from the above Districts on account of his nefarious activities in the area of Rakhial and surrounding area. In the notice it is alleged that petitioner was headstrong person, and extort money from small trades men and threatened the persons. The authority concerned also mentioned in the notice that four serious offences were also registered against the petitioner. On service of this notice, which is dated 13.2.2002, the petitioner appeared before the Deputy Police Commissioner Zone-4, Ahmedabad City, and offered his explanation after considering the material on records vide order impugned, which is dated 19th of August, 2002, the petitioner was directed by the Deputy Police Commissioner, Zone, Ahmedabad City to be removed from the limits of the above said districts for two years. As aforesaid, the appeal filed by the petitioner under Section 60 of the Bombay Police Act came to be dismissed.

4. Learned Advocate Mr.Praful K. Pathak for the petitioner and learned APP Ms.Mita Panchal for the respondents were heard at length.

5. Out of various contentions raised on behalf of the petitioner and controverted by learned APP, from rival contentions, it appears that the matter can be disposed of on the sole ground whether the notice issued under Section 59 of the Bombay Police Act is valid as to support the order passed by the Deputy Commissioner of Police. On going through the notice, which is placed at Annexure-A to the compilation, it is clear that though the area for which the petitioner continues and execute his nefarious activities, is mentioned to be Parmanand Ni

Chali, Rakhial Gam, Rakhial Char Rasta and Rami Ni Chali, but it is not mentioned in the notice from when the petitioner carries on his nefarious activities. When such period is not mentioned during which the alleged nefarious activities have been carried on by the petitioner, then the notice becomes vague and the order becomes tainted with infirmity which is fatal to the order ultimately passed by the concerned authority under Section of the Bombay Police Act. The facts of the case are squarely covered by two decisions of the Division of this Court, namely, (i) in the matter of KATHI HARSUR RUKHAD vs. STATE OF GUJARAT AND ANOTHER, reported in 1986(1) GLR 682 and (ii) RAJPUT RANJITSING JATUBHAI vs. VINAY, SUB-DIVISINAL MAGISTRATE, PALANPUR & ORS., reported in 1986(1) GLR 478. Since the order of the Deputy Commissioner of Police which was passed on 19.8.2002 suffers from the above said fatal infirmity, the same could not be sustained in this Special Criminal Application. The orders impugned, therefore, in this Special Criminal Application is required to be quashed and set aside on this ground alone.

6 In the result, the order passed by the respondent No.2 on 19.8.2002 in Externment Case No.177/2003 is quashed and set aside and consequently the order dated 2.11.2002 passed by the Appellate Authority i.e. State Government modifying the order of Respondent No.2, as aforesaid, is also quashed and set aside. The petition is allowed. Rule made absolute to the aforesaid extent. DS permitted.

(J.R. Vora, J.)

p.n.nair